

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 08-291
)
State of New Hampshire Banking)
)
Department,) AMENDED
) Order to Show Cause with Immediate
Petitioner,) Suspension and
)
and) Cease and Desist Order
)
American Heritage Mortgage Corp, and)
)
Thomas A. Lantry,)
)
Respondents)
)

NOTICE OF ORDER

This Order commences an adjudicative proceeding under the provisions of RSA 397-A, RSA 541-A JUS 800 as applicable.

LEGAL AUTHORITY AND JURISDICTION

Pursuant to RSA 397-A:17, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue an order to show cause why license revocation and penalties for violations of New Hampshire Banking laws should not be imposed.

Pursuant to RSA 397-A:18, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue a complaint setting forth charges whenever the Department is of the opinion that the licensee or person over whom the Department has jurisdiction is violating or has violated any provision of RSA Chapter 397-A, rule or order thereunder.

Pursuant to RSA 397-A:18,II, the Banking Department of the State of New Hampshire (hereinafter the "Department") has the authority to issue and cause to be served an order requiring any person engaged in any act or

1 practice constituting a violation of RSA 397-A or any rule or order
2 thereunder, to cease and desist from violations of RSA 397-A.

3 Pursuant to RSA 397-A:17 and RSA 541-A:30, the Bank Commissioner
4 ("Commissioner") may by order summarily postpone or suspend any license or
5 application pending final determination of any order to show cause, or other
6 order, or of any other proceeding under this section, provided the
7 Commissioner finds that the public interest would be irreparably harmed by
8 delay in issuing such order.

9 Pursuant to RSA 397-A:20, the Commissioner may issue, amend, or
10 rescind such orders as are reasonably necessary to comply with the
11 provisions of the Chapter.

12 Pursuant to RSA 397-A:21, the Commissioner has the authority to
13 suspend, revoke or deny any license and to impose administrative penalties
14 of up to \$2,500.00 for each violation of New Hampshire banking law and
15 rules.

16 Pursuant to RSA 397-A:21,I-a, any person who willfully violates any
17 provisions of RSA 397-A:2,VI or VII or a cease and desist order or
18 injunction issued pursuant to RSA 397-A:18,II shall be guilty of a class B
19 felony. Each of the acts specified shall constitute a separate offense and
20 a prosecution or conviction for any one of such offenses shall not bar
21 prosecution or conviction of any other offense.

22 Pursuant to RSA 383:10-d, the Commissioner shall investigate conduct
23 that is or may be an unfair or deceptive act or practice under RSA 358-A and
24 exempt under RSA 358-A:3, I or that may violate any of the provisions of
25 Titles XXXV and XXXVI and administrative rules adopted thereunder. The

1 Commissioner may hold hearings relative to such conduct and may order
2 restitution for a person or persons adversely affected by such conduct. The
3 Commissioner may utilize all remedies available under the Consumer
4 Protection Act.

5 **NOTICE OF RIGHT TO REQUEST A HEARING**

6 Pursuant to RSA 541-A:30, the Department shall hold a hearing within
7 ten (10) working days after the date of this Order suspending the
8 Respondents' license. That hearing is noticed under separate cover. A
9 record of this proceeding shall be made by a certified shorthand court
10 reporter provided by this Department. If any of the Respondents fails to
11 appear at the hearing after being duly notified, such person shall be deemed
12 in default, and the proceeding may be determined against the defaulting
13 Respondent(s) upon consideration of the Order, the allegations of which may
14 be deemed to be true.

15 After said hearing and within 20 days of the date of the hearing, the
16 Commissioner shall issue a further order vacating this Order or making it
17 permanent as the facts require and making such findings as are necessary.
18 All hearings shall comply with RSA 541-A.

19 The above named Respondents have the right to be represented by
20 counsel at the Respondents' own expense. Any such request shall be in
21 writing, and signed by the Respondents or by the duly authorized agent of
22 the above named Respondents, and shall be delivered either by hand or
23 certified mail, return receipt requested, to the Banking Department, State
24 of New Hampshire, 53 Regional Drive, Suite 200, Concord, NH 03301.
25

1 STATEMENT OF ALLEGATIONS, APPLICABLE LAWS AND REQUEST FOR RELIEF

2 The Amended Staff Petition dated February 23, 2009 (a copy of which is
3 attached hereto) is incorporated by reference hereto.

4 ORDER

5 WHEREAS, finding it necessary and appropriate and in the public
6 interest, and consistent with the intent and purposes of the New Hampshire
7 banking laws, and

8 WHEREAS, finding that the allegations contained in the Staff Petition,
9 if proved true and correct, form the legal basis of the relief requested,

10 WHEREAS, finding a substantial likelihood that delay will cause harm
11 to the public health, safety or welfare, requiring emergency action,

12 It is hereby ORDERED, that:

13 1. **Respondents' license is immediately suspended;** and

14 2. Pursuant to RSA 541-A:30,III, an adjudicative hearing shall
15 be held within ten (10) working days of the date of this
16 Order.

17 It is further hereby ORDERED, that:

18 3. Respondent American Heritage Mortgage Corp ("Respondent
19 American Heritage Mortgage") shall show cause why penalties
20 in the amount of \$187,500.00 should not be imposed against
21 it;

22 4. Respondent Thomas A. Lantry ("Respondent Lantry") shall show
23 cause why penalties in the amount of \$187,500.00 should not
24 be imposed against him;

25 5. The above named Respondents shall be jointly and severally

liable for the above amounts alleged in Paragraphs 3 and 4
above;

6. The above named Respondents shall show cause why, in addition to the penalties listed in Paragraphs 1 through 5 above, Respondent American Heritage Mortgage's license should not be revoked.

It is hereby further ORDERED that:

7. The \$187,500.00 administrative penalty for Respondent American Heritage Mortgage and \$187,500.00 for Respondent Lantry shall both be immediately paid;

8. The above named Respondents shall immediately **Cease and Desist** from all violations of (1) New Hampshire and the rules promulgated thereunder and (2) federal law and the rules promulgated thereunder; and

9. Failure to request a hearing within 30 days of the date of receipt of this Order shall result in a default judgment being rendered and administrative penalties imposed upon the defaulting Respondents(s).

SIGNED,

Dated: 02/23/09

/s/
PETER C. HILDRETH
BANK COMMISSIONER

State of New Hampshire Banking Department

In re the Matter of:) Case No.: 08-291
)
State of New Hampshire Banking) AMENDED
) Staff Petition
Department,)
)
Petitioner,)
) February 23, 2009
and)
)
American Heritage Mortgage Corp, and)
)
Thomas A. Lantry,)
)
Respondents)
)

I. STATEMENT OF ALLEGATIONS

The Staff of the Banking Department, State of New Hampshire (hereinafter referred to as the "Department") alleges the following facts:

Facts Common on All Counts:

1. Respondent American Heritage Mortgage Corp ("Respondent American Heritage Mortgage") is licensed as a Mortgage Banker and at all times relevant to this action has held a Department license since at least 1997.
2. Respondent American Heritage Mortgage's principal office is currently located at 39 Simon Street, Unit 9, Nashua, NH 03060.
3. Respondent Thomas A. Lantry ("Respondent Lantry") is currently President and 100% Owner of Respondent American Heritage Mortgage.

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
Safeguarding Customer Information, 16 C.F.R. Section 314.4(a) via RSA 397-

A:2, III (3 Counts):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
Safeguarding Customer Information, 16 C.F.R. Section 314.4(b) via RSA 397-

A:2, III (3 Counts):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
Safeguarding Customer Information, 16 C.F.R. Section 314.4(c) via RSA 397-

A:2, III (3 Counts):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
Safeguarding Customer Information, 16 C.F.R. Section 314.4(d) via RSA 397-

A:2, III (3 Counts):

Violation of the Gramm-Leach-Bliley Act, Title V, and Standards for
Safeguarding Customer Information, 16 C.F.R. Section 314.4(e) via RSA 397-

A:2, III (3 Counts):

Violation of RSA 397-A:11,I Failure to Maintain Records for Three Years (6
Counts):

4. Paragraphs 1 through 3 are hereby realleged as fully set forth
herein.

5. Respondent American Heritage Mortgage has the following policy in
place with respect to its information security program:

a. All loan files are kept in offices and filing cabinets that
have locks,

b. Annual report documents are kept filed in locked drawers and
locked offices that are locked up every night and weekend, and

1 c. All financial records and documents are maintained in a
2 password protected computer and filing cabinets that are kept
3 in a locked
4 office.

5 6. Further, the Respondents indicate in their policy that office keys
6 are not handed out to all personnel of Respondent American
7 Heritage Mortgage; only Respondent Lantry and the office
8 manager/loan processor have keys to the locked offices and
9 cabinets.

10 7. Respondent American Heritage Mortgage's safeguarding policy is
11 over-simplified and does not meet the above-mentioned
12 requirements.

13 8. While Respondent Lantry was listed on the Officer Questionnaire as
14 the person in charge with the oversight, Respondent American
15 Heritage Mortgage's policy does not identify an employee to
16 coordinate the program.

17 9. Respondent American Heritage Mortgage has failed to provide any
18 documentation evidencing a company-wide risk assessment.

19 10. Respondent American Heritage Mortgage could not provide any
20 documentation of internal audits that had been performed.

21 11. Respondent American Heritage Mortgage employs the services of a
22 number of third party providers, however there appear to be no
23 third party contracts in place.

24 12. During the February 11, 2009 examination (post September 25, 2008
25 Staff Petition and Order), Department Examiners observed the

1 following:

2 a. files were in unlocked cabinets and in rooms that were
3 unlocked, which appears to be a violation of Respondent
4 American Heritage Mortgage's own safeguarding policy, under
5 aspect "a" within "Security of Hard Files";

6 b. as an update to the issue listed in Paragraph 11 above, the
7 above named Respondents provided a disclosure stating they
8 would no longer use a vendor who does not provide a written
9 safeguarding policy, yet there were no actual policies
10 demonstrating such third party vendors had safeguards in place;
11 and

12 c. Respondent American Heritage's safeguarding policy, under
13 aspect "f" within "Security of Hard Files", states that
14 customer information which is of no value is shredded. During
15 the examination, Department Examiners observed customer
16 information being thrown in the trash, not shredded.

17 (1). Consumer F and Consumer G's (a married couple) credit
18 reports were ripped up into five pieces and thrown in the
19 trash. They were easily reassembled. The credit reports
20 included social security numbers, account history and
21 account numbers;

22 (2). Consumer G's paystubs, which included the consumer's
23 social security number, was also in the trash and easily
24 reassembled;

25 (3). Consumer F and Consumer G's mortgage statements for both

1 their first and second mortgage were also in the trash
2 and easily reassembled;

3 (4). Consumer F's and Consumer G's Verification of Employment,
4 which included their social security numbers, were also
5 in the trash;

6 (5). Consumer H's complete loan application, which included
7 his social security number, account numbers and
8 liabilities, was not torn up but simply placed in the
9 trash;

10 (6). Consumer I's W-2 in an unopened envelope was labeled
11 "returned to sender" and placed directly in the trash
12 unopened. Consumer I is Respondent American Heritage
13 Mortgage's employee.

14 13. Respondent American Heritage Mortgage does not appear to have
15 substantially evaluated or adjusted the program since its
16 inception and appears to violate state law on record retention.

17 REGARDING THE APPRAISAL FORM

18 Violation of RSA 397-A:6, I Failure to Supervise (1 Count):

19 Violation of RSA 397-A:17, I(g) Failure to Supervise (1 Count):

20 Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (1 Count):

21 14. Paragraphs 1 through 13 are hereby realleged as fully set forth
22 herein.

23 15. Respondent American Heritage Mortgage routinely uses a form
24 entitled "Appraisal Request Form".

25 16. Respondent American Heritage Mortgage sends this form to

1 appraisers requesting that an appraisal be done on a particular
2 property.

3 17. The Appraisal Request Form includes sections labeled "Value or
4 Sale price" and "Loan Amount".

5 18. The purpose of an appraisal is to provide an estimated value of a
6 property from a neutral third party.

7 19. Respondent American Heritage Mortgage failed to properly supervise
8 its employees to ensure that there were no attempts to influence
9 the appraisers' opinion of value.

10 **REGARDING THE DISCLOSURES TO CONSUMERS**

11 **Violation of RSA 397-A:6, I Failure to Supervise (3 Counts):**

12 **Violation of RSA 397-A:17, I(g) Failure to Supervise (3 Counts):**

13 **Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (3 Counts):**

14 20. Paragraphs 1 through 19 are hereby realleged as fully set forth
15 herein.

16 21. Respondent American Heritage Mortgage uses a HUD form that states
17 "I [mortgage broker] am your agent and I will get you the most
18 favorable mortgage loan that meets your stated objectives. I
19 will shop for your loan from amount 0 lender(s). For my
20 services, I will charge you a fee, but I will not receive any
21 additional fee for your mortgage from a lender."

22 22. The same HUD form described above states that the mortgage broker
23 is not collecting any compensation for its involvement in the
24 process.

25 23. Consumer A's file contains a mortgage broker contract stating zero

1 compensation. However, a good faith estimate dated August 8,
2 2006 and another dated August 9, 2006 show both a loan
3 origination fee payable from the borrower and a yield spread
4 premium payable from the lender. Despite disclosing zero
5 compensation on the mortgage broker contract, Respondent American
6 Heritage Mortgage collected \$3,632.10 for its services at
7 closing.

8 24. Consumer B and Consumer C (a married couple) had a file containing
9 the mortgage broker contract stating zero compensation. Consumer
10 B and Consumer C were also provided a good faith estimate on the
11 same day disclosing fees payable from the borrower and a yield
12 spread premium payable from the lender. Respondent American
13 Heritage Mortgage subsequently re-disclosed the good faith
14 estimate on September 8, 2006, which failed to disclose the yield
15 spread premium. At closing, Respondent American Heritage Mortgage
16 collected \$5,368.39 (including a yield a spread premium) for its
17 services.

18 25. Consumer D's file contained a mortgage broker contract stating
19 zero compensation. A good faith estimate was provided Consumer D
20 on the same day, disclosing fees payable from the borrower and a
21 yield spread premium payable from the lender. Despite disclosing
22 zero compensation on the mortgage broker contract, Respondent
23 American Heritage Mortgage collected \$350.00 at application and at
24 closing, an additional \$3,125.00 for its services.

25 26. Respondents failed to properly supervise employees to ensure

1 consumers were not given incorrect and misleading disclosures
2 relative to the mortgage broker relationship and compensation
3 received.

4 Violation of RSA 397-A:10,IV Failure to Update Information on File with
5 Commissioner (1 Count):

6 27. Paragraphs 1 through 26 are hereby realleged as fully set forth
7 herein.

8 28. Respondent American Heritage Mortgage has registered the trade
9 name "American Heritage Mortgage" with the New Hampshire
10 Secretary of State.

11 29. However, Respondents have failed to register the trade name
12 "American Heritage Mortgage" with the Department.

13 30. This trade name would be its d/b/a and would need to be on its
14 license.

15 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24
16 C.F.R. Section 3500.7(a) via RSA 397-A:2,III (2 Counts):

17 Violation of the Real Estate Settlement Procedures Act, Regulation X, 24
18 C.F.R. Section 3500.7(c)(2) via RSA 397-A:2,III (1 Count):

19 Violation of RSA 397-A:6,I Failure to Supervise (8 Counts):

20 Violation of RSA 397-A:11,I Failure to Properly Record Keep (3 Counts):

21 Violation of RSA 397-A:16,I Failure to Provide Written Disclosures to
22 Consumers within 3 Days of Receipt of a Loan Application (2 Counts):

23 Violation of RSA 397-A:17,I(f) Fraudulent Misrepresentations or Concealment
24 of Material Particulars to the Consumer (8 Counts):

25 Violation of RSA 397-A:17,I(g) Failure to Supervise (8 Counts):

Violation of RSA 397-A:17, I(k) Dishonest or Unethical Practices (9 Counts):

31. Paragraphs 1 through 30 are hereby realleged as fully set forth herein.

32. Respondent American Heritage Mortgage has a file for Consumer E.

33. Consumer E's file contained an application that was signed and dated by Consumer E in red ink.

34. The date was subsequently "whited out" and replaced with another date in blue ink, which was not in the same handwriting as the signature.

35. Consumer E's file also contained a Truth in Lending Disclosure Statement and a Good Faith Estimate (both hereinafter collectively "Documents") with pre-computed dates of March 5, 2007. Both Documents were signed and dated by Consumer E, but the dates were subsequently "whited out" and no other date was written or typed in to replace the initial signature date.

36. Consumer E's file also contained a Good Faith Estimate that had a handwritten note on the bottom right of the disclosure that stated "Mailed 3/7/07". This disclosure, which is to be mailed to Consumer E to be signed and dated by Consumer E, had the date of Consumer E's signature as the same date the document was mailed to Consumer E.

37. Further, Consumer E's file includes an application signed and dated by Consumer E on 1/24/07. However, the application also had a handwritten note on the bottom of the page stating the application was "Mailed 3/2/07". This means the application was

1 mailed to Consumer E in March, even though the date states he
2 received it close to two months prior in January 2007.

3 38. During the February 11, 2009 examination of Respondent American
4 Heritage Mortgage, Department Examiners discovered particular
5 consumer loan documents in the trash can by the photocopier. They
6 were documents related to the Consumer F and G loan file (a
7 married couple) and the Consumer J loan file.

8 39. The following pertain to the Consumer F and Consumer G loan file:

9 a. The loan began on or about February 9, 2008, as evidenced by
10 the torn up and thrown out copy of the original credit report.
11 A second credit report dated April 8, 2008 was left in the loan
12 file. However, Respondent American Heritage Mortgage attempted
13 to have the original date of the loan appear as March 25, 2008,
14 which was the date Consumer F and Consumer G first signed the
15 application (1003 form) in the loan file.

16 b. Pursuant to state and federal statutes, the above named
17 Respondents were required to give a good faith estimate (proper
18 disclosures) within three business days of receipt of the
19 consumers' financial information. Receipt of Consumer F's and
20 Consumer G's financial information was on or about February 9,
21 2008 (the credit report found in the trash). This meant, that
22 Respondents were required to give a good faith estimate on or
23 about February 13, 2008, which Respondents so failed to do.

24 c. In order to appear as if Respondents complied with the
25 disclosure timeframes, Respondents threw out the February 9,

2008 credit report, and left the April 8, 2008 credit report. The April 8, 2008 credit report would be considered additional financial information that would not impact the disclosure timeframes since Consumer F and Consumer G had already signed the loan application (1003 form) on March 25, 2008.

d. However, the signed March 25, 2008 loan application (1003 form) was missing page 3. The Department Examiners later found the majority of page 3 in the trash. The bottom portion of the page had been cut out and it was clear the Consumer F and Consumer G signatures has been removed from the page.

e. Department Examiners later found the cut out Consumer F and Consumer G signatures taped on a crumpled Good Faith Estimate, which was also in the trash. This Good Faith Estimate had a pre-printed date at the top of the page of June 3, 2008, yet no date appeared next to the taped signatures of Consumer F and Consumer G.

f. In the Consumer F and Consumer G loan file, Department Examiners found a copy of the copied Good Faith Estimate from the trash, with further alterations to the document.

g. The Good Faith Estimate found in the file now had March 25, 2008 (as 3/25/08) written next to the Consumer F and Consumer G signatures. Further, there must have been a version between the Good Faith Estimate found in the trash and the one in the file because the one in the trash had a pre-printed date at the top of the page of June 3, 2008 and the Good Faith Estimate

1 found in the file now had a blank where the June 3, 2008 was
2 previously.

3 h. Department Examiners did not find an original Good Faith
4 Estimate in the Consumer F and Consumer G loan file. To
5 further hide that the June 3, 2008 Good Faith Estimate was
6 altered to reflect a March 25, 2008 date, an unsigned Good
7 Faith Estimate with a pre-printed date of May 22, 2008 had been
8 removed from the Consumer F and Consumer G loan file (as
9 evidenced by the two-hole punch in the document), torn up and
10 thrown in the trash. In other words, if Consumer F and
11 Consumer G didn't sign their loan application until March 25,
12 2008, and Respondents didn't pull a credit report until April
13 8, 2008, how can Consumer F and Consumer G have a Good Faith
14 Estimate dated May 22, 2008.

15 40. The following pertain to the Consumer J loan file:

16 a. Consumer J's loan file had a pre-printed date of January 7,
17 2008. Consumer J did not date of the original documents;
18 however, all other paperwork in the Consumer J loan file had a
19 pre-printed date of September 15, 2008, including the Good
20 Faith Estimate.

21 b. There were no Good Faith Estimates in the Consumer J loan file
22 dated on or about January 10, 2008, which would have been the
23 three business day disclosure requirement.

24 c. The September 15, 2008 Good Faith Estimate in the Consumer J
25 loan file did not list a Yield Spread Premium (YSP).

1 d. When the Department Examiners (during the February 9, 2009
2 examination) inquired of the date discrepancy and the lack of
3 YSP, Respondent Lantry attempted to change the date on the loan
4 application. Department Examiners quickly informed him he could
5 not change the document, at which point Respondent Lantry
6 retracted his hand holding the pen.

7 e. During the second-day of examination, on February 10, 2009,
8 Respondent Lantry produced another Good Faith Estimate dated
9 September 15, 2008 that reflected two changes from the Good
10 Faith Estimate Department Examiners found in the Consumer J
11 loan file. The Good Faith Estimate Respondent Lantry produced
12 now included a YSP and named Respondent Lantry as the
13 originator instead of Scott Drohan (who is listed on the Good
14 Faith Estimate in the Consumer J loan file).

15 f. Respondent Lantry also produced a letter allegedly from
16 Consumer J dated February 9, 2009, which stated that Consumer J
17 applied for a mortgage loan on September 15, 2008. The
18 signature on the letter, however, bears no resemblance to
19 Consumer J's signature present in the loan file. Respondent
20 Lantry also indicated Consumer J verbally told him he kept the
21 original Good Faith Estimate at home instead of giving it to
22 Respondent Lantry.

23 (1). Department Examiners found in the trash an exact
24 replica (missing the signature portion) of the Good
25 Faith Estimate produced by Respondent Lantry. It

1 was torn into over 20 pieces and appeared to have
2 been mis-fed through the photocopier.

3 (2). It is important to note that recently Consumer J
4 had a refinance on a separate property through
5 Respondents and may have simply been given the
6 newly produced Good Faith Estimate (the one with a
7 YSP listed) as among the documents to sign. This
8 is highly probable since an original disclosure
9 document signed by Consumers typically have the
10 signature portion of the document highlighted for
11 ease of location to sign. Both the original Good
12 Faith Estimate found in the loan file and the Good
13 Faith Estimate produced by Respondent Lantry had
14 the yellow highlights.

15 **II. ISSUES OF LAW**

16 The staff of the Department alleges the following issues of law:

- 17 1. The Department realleges the above stated facts in paragraphs 1
18 through 40 above.
- 19 2. The Department has jurisdiction over the licensing and regulation
20 of persons engaged in mortgage banker activities pursuant to RSA
21 397-A:2 and RSA 397-A:3.
- 22 3. RSA 397-A:3 requires those in the business of making or brokering
23 mortgage loans secured by real property located in this state,
24 and not exempt from licensure, to obtain a license from the
25 Department.

1 4. RSA 397-A:2,II requires any mortgage loans made or brokered under
2 RSA Chapter 397-A to be further governed by any other applicable
3 laws of the state of New Hampshire.

4 5. RSA 397-A:2,III requires persons subject to or licensed under RSA
5 Chapter 397-A to abide by applicable federal laws and
6 regulations, the laws and rules of the State of New Hampshire,
7 and the orders of the Commissioner. Any violation of such law,
8 regulation, order, or rule is a violation of RSA Chapter 397-A.
9 Each of the above named Respondents violated this statute on
10 eighteen occasions as alleged above.

11 6. The Gramm-Leach-Bliley Act, Title V, Sec. 501(a) states that it is
12 the policy of the Congress that each financial institution has an
13 affirmative and continuing obligation to respect the privacy of
14 its customers and to protect the security and confidentiality of
15 those customers' nonpublic personal information.

16 7. 16 C.F.R. Section 314.4(a), Standards for Safeguarding Customer
17 Information, states that the licensee's information security
18 program is required to designate an employee or employees to
19 coordinate the program. Each of the above named Respondents
20 violated this provision on at least three occasions as alleged
21 above.

22 8. 16 C.F.R. Section 314.4(b), Standards for Safeguarding Customer
23 Information, states that the licensee is required to perform and
24 document a risk assessment. Each of the above named Respondents
25 violated is provision on three occasions as alleged above.

1 9. 16 C.F.R. Section 314.4(c), Standards for Safeguarding Customer
2 Information, states that the licensee is required to design,
3 implement and regularly test safeguards in place. Each of the
4 above named Respondents violated this provision on at least three
5 occasions as alleged above.

6 10. 16 C.F.R. Section 314.4(d), Standards for Safeguarding Customer
7 Information, states that the licensee is required to enter into
8 contracts with third party providers to ensure those parties
9 implement and maintain safeguards. Each of the above named
10 Respondents violated this provision on at least three occasions
11 as alleged above.

12 11. 16 C.F.R. Section 314.4(e), Standards for Safeguarding Customer
13 Information, states that the licensee is required to evaluate and
14 adjust the information security program. Each of the above named
15 Respondents violated this provision on at least three occasions
16 as alleged above.

17 12. 24 C.F.R. Section 3500.7(a) provides that the Good Faith Estimate
18 must be given to the Consumer within three days. Each of the
19 above named Respondents violated this provision on at least two
20 occasions as alleged above.

21 13. 24 C.F.R. Section 3500.7(c)(2) provides that a Good Faith
22 Estimate consists of an estimate, as a dollar amount or range, of
23 each which...will be listed in Section L of the HUD-1 or HUD-1A in
24 accordance with instructions set forth in Appendix A to this
25 part; and...each such estimate must be made in good faith and bear

1 a reasonable relationship to the charge a borrower is likely to
2 be required to pay at settlement, and must be based upon
3 experience in the locality of the mortgaged property. Each of
4 the above named Respondents violated this provision on at least
5 one occasion as alleged above.

6 14. RSA 397-A:6,I mandates that licensees supervise their employees,
7 agents, loan originators, and branch offices. Each of the above
8 named Respondents failed to adequately supervise and therefore
9 violated this statute on at least twelve occasions as alleged
10 above.

11 15. RSA 397-A:10,IV provides that persons licensed under RSA Chapter
12 397 are under a continuing obligation to update information on
13 file with the Commissioner. Each of the above named Respondents
14 failed to update the Commissioner on at least one occasion as
15 alleged above.

16 16. RSA 397-A:11,I provides that the licensee shall maintain such
17 records as will enable the Department to determine whether the
18 licensee's business is in compliance with the provisions of RSA
19 Chapter 397-A and the rules adopted pursuant to it. Such records
20 shall be maintained and made available for examination at the
21 licensee's principal office or its branch office location or the
22 office of its New Hampshire agent for a period of at least 3
23 years after the loan is closed, if the loan is retained in the
24 licensee's portfolio, or 3 years after the loan is paid in full,
25 if the loan is retained in the licensee's loan portfolio.

1 Licensees may maintain photocopies, microfilm, or microfiche
2 copies of original documents. Each of the above named
3 Respondents violated this provision on at least nine occasions as
4 alleged above.

5 17. RSA 397-A:16, I provides mortgage bankers and mortgage brokers may
6 charge fees and points for services rendered in conjunction with
7 the origination, closing, and servicing of loans; provided,
8 however, that the mortgage banker or mortgage broker issues a
9 written disclosure to the borrower stating the estimated amount
10 and purpose of all fees and expenses within 3 business days of
11 the receipt of a loan application. Each of the above named
12 Respondents violated this provision on at least two occasions as
13 alleged above.

14 18. RSA 397-A:17 provides the Commissioner may issue an order
15 requiring a person to whom any license has been granted or any
16 person under the Commissioner's jurisdiction to show cause why
17 the license should not be revoked, suspended, or penalties
18 imposed, or both, for violations of RSA Chapter 397-A. Pursuant
19 to RSA 397-A:17 (a) and (b), Respondent American Heritage
20 Mortgage is subject to license revocation for violating provision
21 of RSA Chapter 397-A and for not meeting the standards
22 established by RSA Chapter 397-A.

23 19. RSA 397-A:17, I provides in part that the Commissioner may by
24 order, upon due notice and opportunity for hearing, assess
25 penalties or deny, suspend, or revoke a license or application if

1 it is in the public interest and the applicant, respondent, or
2 licensee, any partner, officer, member, or director, any person
3 occupying a similar status or performing similar functions, or
4 any person directly or indirectly controlling the applicant,
5 respondent, or licensee: (a) has violated any provision of RSA
6 Chapter 397-A or rules thereunder, or (b) has not met the
7 standards established in RSA Chapter 397-A.

8 20. RSA 397-A:17,I(f) provides that licensees are prohibited from
9 making fraudulent misrepresentations, circumvent or conceal,
10 through whatever subterfuge or device, any of the material
11 particulars or the nature thereof required to be stated or
12 furnished to a borrower under the provisions of this chapter.
13 Each of the above named Respondents violated this provision on at
14 least eight occasions as alleged above.

15 21. Pursuant to RSA 397-A:17,I(g), licensees engaging in business in
16 New Hampshire must supervise their agents, originators, managers
17 or employees. Each of the above named Respondents violated this
18 statute on at least twelve occasions as alleged above.

19 22. Pursuant to RSA 397-A:17,I(k), licensees engaging in business in
20 New Hampshire are prohibited from engaging in unethical business
21 practices. Each of the above named Respondents violated this
22 statute on at least thirteen occasions as alleged above.

23 23. RSA 397-A:18,I provides that the Department may issue a complaint
24 setting forth charges whenever the Department is of the opinion
25 that the licensee or person over whom the Department has

jurisdiction, has violated any provision of RSA 397-A or orders thereunder.

24. RSA 397-A:18,II the Commissioner may issue a Cease and Desist order against any licensee or person who has reasonable cause to believe is in violation of the provisions of the chapter or any rule or order under RSA Chapter 397-A.

25. RSA 397-A:21,IV provides that any person who, either knowingly or negligently, violates any provision of RSA Chapter 397-A, may upon hearing, and in addition to any other penalty provided for by law, be subject to an administrative fine not to exceed \$2,500.00 or both. Each of the acts specified shall constitute a separate violation, and such administrative action or fine may be imposed in addition to any criminal penalties or civil liabilities imposed by New Hampshire Banking laws. Each of the above named Respondents are subject to administrative fines for violations of the above mentioned statutes.

26. RSA 397-A:21,V provides that every person who directly or indirectly controls a person liable under this section, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act constituting the violation, and every licensee or person acting as a common law agent who materially aids in the acts constituting the violation, either knowingly or negligently, may, upon notice and opportunity for hearing, and in addition to any

1 other penalty provided for by law, be subject to suspension,
2 revocation, or denial of any registration or license, including
3 the forfeiture of any application fee, or the imposition of an
4 administrative fine not to exceed \$2,500, or both. Respondent
5 Lantry is subject to revocation and/or administrative fines for
6 the above-stated violations.

7 **III. RELIEF REQUESTED**

8 III. The staff of the Department requests the Commissioner take the
9 following Action:

- 10 1. Find as fact the allegations contained in section I of this Staff
11 Petition;
- 12 2. Make conclusions of law relative to the allegations contained in
13 section II of the this Staff Petition;
- 14 3. Pursuant to RSA 397-A:17, order each of the above named
15 Respondents to show cause why their license should not be
16 immediately suspended;
- 17 4. Pursuant to RSA 397-A:17, order each of the above named
18 Respondents to show cause why their license should not be revoked;
- 19 5. Pursuant to RSA 397-A:18, order each of the above named
20 Respondents to immediately **Cease and Desist** from violations of
21 this chapter;
- 22 6. Assess fines and administrative penalties in accordance with RSA
23 397-A:21, for violations of Chapter 397-A, in the number and
24 amount equal to the violations set forth in section II of this
25 Staff Petition; and

7. Take such other administrative and legal actions as necessary for enforcement of the New Hampshire Banking Laws, the protection of New Hampshire citizens, and to provide other equitable relief.

IV. RIGHT TO AMEND

The Department reserves the right to amend this Staff Petition and to request that the Commissioner take additional administrative action. Nothing herein shall preclude the Department from bringing additional enforcement action under RSA 397-A or the regulations thereunder.

Respectfully submitted by:

/s/

Maryam Torben Desfosses
Hearings Examiner

02/23/09
Date